

SERVED: June 7, 1993

NTSB Order No. EA-3905

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 7th day of June, 1993

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| _____ |) | |
| JOSEPH M. DEL BALZO, |) | |
| Acting Administrator, |) | |
| Federal Aviation Administration, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| |) | Dockets SE-13044 and |
| |) | SE-13064 |
| v. |) | |
| |) | |
| CLAY B. CARSON and |) | |
| RANDALL M. RICHTER, |) | |
| Respondents. |) | |
| _____ |) | |

OPINION AND ORDER

The Administrator has appealed from the oral initial decision Administrative Law Judge William R. Mullins rendered in the consolidated cases on May 6, 1993, at the conclusion of an evidentiary hearing. By that decision, the law judge reversed the Administrator's emergency suspension, by orders dated March 22, 1993, of the respondents' mechanic certificates (Nos. 464782350 and 451083308, both with airframe and powerplant

ratings), pending a successful re-examination of their qualifications to hold those certificates.¹ Because we find, as discussed below, that the law judge erred in reversing the orders, we will grant the appeal, to which no reply was filed, and reinstate the suspensions.²

This case arose following the investigation of the FAA-designated examiner who had administered to the respondents the oral and practical portions of the examination they had taken to demonstrate their fitness to hold mechanic certificates. That investigation, in which the respondents cooperated by, among other things, allowing themselves to be interviewed as to the nature and scope of the testing they had received from the examiner, led the Administrator to believe that the tests given to respondents, and perhaps to hundreds of others who had been issued certificates by the examiner, were seriously deficient, in that, among other things, they did not cover many of the required subject areas, either at all or in appropriate depth. Based on the findings of the investigation, the Administrator revoked the examiner's designation and all of his airman certificates, and he initiated efforts to ascertain whether those individuals whom the examiner had certified as competent to hold a mechanic certificate did in fact meet requirements. The emergency suspension orders at issue in this proceeding resulted from the

¹An excerpt from the hearing transcript containing the initial decision is attached.

²Copies of the emergency orders of suspension are attached.

respondents' refusals to submit to re-examination requests spawned by the investigation.

The inspectors who had investigated the examiner testified about their interviews with the respondents and the deficiencies in testing those interviews revealed. Also placed in evidence were statements the respondents had signed after their interviews, the substance of which fully corroborated the inspectors' accounts. The respondents, in their testimony, did not contradict the substantial accuracy of the inspectors' account or of their own earlier statements.³

While it is not entirely clear from the initial decision whether the law judge recognized that the Administrator had authority to re-examine the qualifications of a mechanic, it is clear that he found the evidence insufficient to support a conclusion that the respondents' tests were so incomplete as to warrant retesting. As to the evidentiary point, we are at a loss to understand the law judge's ruling, for the evidence of the examiner's failure to conduct the tests in accordance with the Aviation Mechanic Examiner Handbook is both overwhelming and essentially unrefuted on the record.⁴ As to the jurisdictional

³They did, however, in effect, urge the law judge to bear in mind that the inspectors' assessment of the thoroughness of the examinations should be evaluated in light of the respondents' inability to remember everything about the tests they had taken some six months earlier.

⁴The law judge asserts that "the only basis" for the Administrator's suspension orders are the statements the respondents gave to the inspectors who were investigating the examiner. See I.D. at 132. We disagree. Independent documentary corroboration of the Administrator's allegations was

point, the law judge appears to have been unaware that a mechanic is by law considered an airman and is, therefore, subject to re-examination under Section 609 of the Federal Aviation Act. See Section 101(7) of the Act, 49 U.S.C. App. 1301; see also, 14 CFR § 1.1. In any event, it is clear that the law judge's decision must be reversed.⁵

We have repeatedly held that to prevail on an order suspending an airman certificate pending successful reexamination, the Administrator need only show that a reasonable basis exists for questioning the certificate holder's competence.

See, e.g., Administrator v. Wang, NTSB Order EA-3264 (1964).

There appears to be no dispute in this case that if the tests administered to the respondents did not substantially conform to the requirements of the examiner's Handbook, a genuine question would be presented as to whether the respondents possessed the

(..continued)

provided by Administrator's Exhibit 1, admitted without objection by the respondents. That exhibit is a certified true copy of the emergency order of revocation that was issued to the examiner. In it, the examiner is alleged to have falsely certified having tested respondents in accordance with "pertinent procedures and standards." Id. at 8, 10. An appeal to the Board from this order was withdrawn before adjudication.

⁵The law judge's decision appears to have been heavily influenced by his perception that the respondents had not been treated fairly, partly because they were not made aware that the information they gave about the examiner could have an adverse impact on the validity of the certificates for which he had tested them. Whether or not such a consequence should have been reasonably apparent from the fact of the investigation into the propriety of the examiner's performance of his role in licensing mechanics, we do not believe that the manner in which the investigation was conducted was relevant to the narrow legal issue the Administrator's case presented for decision by the law judge.

requisite technical skill and knowledge demanded of a certificated aviation mechanic. Given the Administrator's largely uncontradicted showing that the tests were incomplete as alleged, there is no escaping the conclusion that he is entitled to remove any doubt that the respondents may not possess the qualifications that passing a proper examination is presumed to demonstrate.

Our ruling here implies, of course, no judgment as to the respondents' actual competence as mechanics, and it should not be read to suggest that we do not appreciate the inequity of the situation in which the respondents, through no apparent fault of their own (or of the Administrator's, for that matter), find themselves. At the same time, the additional burdens imposed on the respondents by requiring that they be retested do not outweigh the Administrator's interest in insuring that unqualified individuals not be allowed to perform maintenance on aircraft.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is granted;
2. The initial decision is reversed; and
3. The Emergency Orders of Suspension are affirmed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.